IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24570 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRECISE FORMULATION - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR CL SONI for Petitioner(s) : 1,
MS SANGITA VISHEN, AGP for Respondent(s) : 1-3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 06/02/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Rule. Ms Sangita Vishen, learned AGP waives

service of Rule for the respondents. In the facts and circumstances of the case, the petition is taken up for final disposal of today.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 23.11.2005 (Annexure “F”) passed by respondent No.2–Director, Central Medical Stores Organization, Gujarat State, Gandhinagar blacklisting the petitioner for a period of three years from 23.11.2005 in the matter of purchase of Chlorine tablets for the Health and Family Welfare Department and its subordinate offices, hospitals and dispensaries.

3. The petitioner was given contracts for supplying Chlorine tablets for three consecutive years 2003-04, 2004-05 and 2005-06. By communication dated 15.7.2004 (Annexure “A”), respondent No. 2 called upon the petitioner to replace Chlorine tablets under Batch No. 422 on the ground that they were declared as “not of standard” quality by Food & Drug Laboratory, Baroda on the parameters of chlorine content, stability and moisture. The petitioner replaced the said batch containing 280 containers of Chlorine tablets. Each container has 1000 tablets. Thereafter respondent No. 2 issued a show cause notice dated 29.4.2005 (Annexure “C”) calling upon the petitioner to show cause why the petitioner should not blacklisted for supplying the aforesaid batch which was found to be “not of standard”. The

petitioner submitted his reply dated 25.5.2005 (Annexure “D”) stating that the samples were not taken in air tight container and that if such samples are not taken in a sealed container but if they were taken in loose bags, even small pin holes in the plastic wrapper can result into loss of chlorine content and stability and also excess of moisture. It was also pointed out that the samples from Batch No. 422 were taken in March 2004 but they were tested on 8.6.2004 and that climatic condition and storage conditions can also result into deterioration of chlorine content. It was also stated that the petitioner had already replaced Batch No. 422 on 23.8.2004 and that the petitioner is the only SSI unit in the Gujarat State manufacturing Chlorine tablets. It was also stated that in the years 2002-03, 2003-04 and 2004-05 the petitioner had supplied three other batches with more than 1,60,000 tins (containers) and that no other sample except the samples from Batch No. 422 had failed to meet the standards.

It appears that in the meantime the petitioner was given contract for supplying Chlorine tablets in the year 2004-05 and also for the year 2005-06. However, on 23.11.2005, the Director passed the impugned order blacklisting the petitioner for a period of three years in the matter of supplying Chlorine tablets to the Health & Family Welfare Department and its subordinate offices, hospitals and dispensaries.

4. During pendency of the petition challenging the above order, the petitioner submitted that the petitioner had already manufactured Chlorine tablets for the State Government for the year 2005-06 but on account of the impugned order the batches already manufactured by the petitioner were not being accepted by the Government. There was a possibility of deterioration of such tablets on account of passage of time. Hence, by our interim order dated 29.12.2005, we directed the respondents to accept, without prejudice to the rights and contentions of the parties, the consignment of Chlorine tablets under Delivery Challan No. 207/05-06 dated 25.11.2005 containing 7500 tins of Chlorine tablets (each tin containing 10 x 100 Chlorine tablets). We had further made it clear that it would be open to the respondents to accept the same without making any payment to the petitioner, but subject to testing.

5. At the hearing of this petition, Ms Sangita Vishen, learned AGP has opposed the petition and submitted on the basis of the affidavit in reply that since the Chlorine tablets supplied by the petitioner under Batch No. 422 failed to meet with the standards, the authorities were justified in passing the impugned order. It is submitted that the relevant parameters for the standards as per the Bureau of Indian Standards and the results of the tests conducted by the Drug Laboratory at Baroda are as under :-

Sr No.	Particulars	As per IS standard	As per Report	Remarks
1	Contents of available Chlorine	1.25 mg of Chlorine per litre of water	1.19 mg of Chlorine per liter of water	Not of standard quality
2	Stability percentage of Chlorine	Min. 80.0	6.30	-do-
3	Moisture percentage	Max. 2.0	3.48	-do-
NOTE : The sample does not conform to the standard.				

The learned AGP, however, fairly stated that 25 samples of the tablets supplied by petitioner as per the above delivery challan dated 25.11.2005 met with the IS standards both on the parameters of Chlorine content and moisture content and the said results are set out in Annexure IV to the reply affidavit. As per the said report, the Chlorine content is between 37 to 43 mg. and the moisture content is 0.60% or less. It appears that now stability percentage is not being prescribed or tested.

6. Mr CL Soni, learned counsel for the petitioner has submitted that as per the standards laid down by the Bureau of Indian Standards for the relevant year 2003-04, para 4.3 stipulated that the Chlorine content should be 25 – 45 in 20 litres of water, meaning thereby 1.25 per litre. However, paras 5 and 6 of Indian Standard Chlorine Tables –

Specifications specifically provided as under :-

> "5. SHELF LIFE
>
> The material when taken out from the originally packed containers shall comply with the requirements prescribed in 4 and Table 1 for not less than six months from the date of packing, which shall be marked on the container. After the period of more than six months the minimum available chlorine shall be as agreed to between the purchaser and the supplier.
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> 6. PACKING AND MARKING
>
> 6.1 Packing
>
> The tablets shall be packed in air tight amber-coloured glass bottles or plastic containers.
>
> 6.1.1 Storing
>
> The material shall be stored in shade at room temperature, away from source of heat and moisture.
>
> 6.2 Marking
>
> The containers shall be securely closed and marked with the following information :
>
> a) Name of the material;
> b) Size of tablets and the quantity of water recommended for treatment;
> c) Number of tablets in the bottle;
> d) Month and year of packing;
> e) Indication of the source of manufacture;
> f) Batch number to enable the lot of manufacture to be traced from records; and
> g) Shelf life.
>
> (emphasis supplied)

It is submitted that the standards as

specified in para 4 were required to be complied with for the period of six months from the date of packing and after the period of more than six months, the minimum available chlorine was to be as agreed to between the purchaser and the supplier, but there was no specific agreement for the subsequent period of six months. It is also submitted that the samples taken from Batch No. 422 were not tested within a period of six months, but they were tested in the ninth month. In the meantime, the tablets lying in plastic wrappers may have been subjected to pin holes resulting into loss of chlorine content and excess of moisture.

As regards replacement of Batch No. 422, Mr Soni submitted that since the value of Chlorine tables of that batch was less than Rs.8,000/-, the petitioner was not interested in taking up cudgels with the authorities lest he should lose the business with the respondent authorities.

7. In reply, Ms Vishen, learned AGP has submitted that the period of six months stipulated in para 5 of the Bureau of Indian Standards would apply only if the samples are taken by opening the packed container, but in the instant case the samples were taken by the Drug Inspector without opening the container and the four samples taken were in sealed plastic containers and, therefore, the samples were required to meet with the standards for the entire year and not merely for the fist six months.

8. Having heard the learned counsel for the parties, it appears to us that the controversy between the parties is essentially on the question of interpretation of the expression “packed containers”. According to the petitioner, the packed containers are the sealed plastic containers containing 10 pouches each with 100 tablets and that the Drug Inspector had taken samples by opening the air-tight plastic container. On the other hand, the learned AGP submitted that each pouch was the plastic container by itself and was in a sealed condition and, therefore, there was no question of packed container having been opened after a period of six months.

9. Having ourselves seen one sealed air tight plastic container and a plastic wrapper containing chlorine tablets (as shown by the learned counsel for the petitioner), we are of the view that the expression “packed containers” would mean air-tight plastic containers each containing 10 pouches because the standards laid down by the Bureau of Indian Standards also refer to packing in air-tight glass bottles or plastic containers. Annexure “B” to the IS Standard Chlorine Tablets – Specification referred to preparation of samples and a perusal of the said instructions for sampling of Chlorine tablets also indicates that what was meant by a plastic container was a plastic container with 1000 tablets.

10. We make it clear that we have also given this benefit of doubt in favour of the petitioner for the following additional reasons :-

(i) the petitioner has met with the standards in respect of all the 25 samples for which the summary of analysis report is given in Annexure IV to the reply affidavit.

(ii) on the basis of the sample analysis reports, the Commissioner of Drugs had issued the show cause notice to the petitioner on 14.7.2004 and even after the petitioner submitted his reply on 26.7.2004 as stated by the learned counsel for the petitioner, and although the hearing took place on 10.1.2005, the Commissioner of Drugs has so far not passed any order adverse to the petitioner.

11. In the result, the petition is allowed, the impugned order dated 23.11.2005 and the two consequential order dated 25.11.2005 (all at Annexure “F” colly.) are hereby quashed and set aside.

12. As no objection is raised about the Chlorine tablets supplied by the petitioner under delivery challan No. 207/05-06 dated 25.11.2005, they are shown to have met with the standards and the acceptance of the same was subject to the result of the petition, in view of the above findings and discussion, the respondents are directed to pay the petitioner the contract price for the said Chlorine

tablets.

Rule is accordingly made absolute.

[M.S. SHAH, J.]

[SHARAD D. DAVE, J.]

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